



# USAPDA

## Intro to the PDES/Senior Adjudicators Course



### Dispositions

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# Intro to the PDES/Senior Adjudicators Course

## Dispositions

### Session Objectives

- To know the dispositions that equate to the disability rating and YOS.
- To recognize that the minimum 30 percent disability percentage is not required for permanent or temporary disability retirement if the Soldier has 20 years of Service as computed under 10 USC 1208.
- To understand the meaning of “20 years of service as computed under 10 USC 1208.”
- Except for those with the requisite 20 years, to recognize that stability is not a factor for remaining on the TDRL for Soldiers rated at less than 30 percent.



## Intro to the PDES/Senior Adjudicators Course Dispositions

Index of Slides (Omitting Title Page, Objectives, Index)

- #4. Computation of Service under 10 USC 1208
- #5. Relationship of the DVA Rating Schedule to PDES Dispositions
- #6. Dispositions of Fit, Permanent Disability Retirement, and Temporary Disability Retirement
- #7. Disposition of Separate with Severance Pay (SWSP)
- #8. Disposition of Separate without Entitlement to Severance Pay
- #9. Nondisability Separation Pay
- #10. Grade at which Retired for Disability or Severance Pay Paid
- #11 and #12: PE: What is the appropriate disability disposition for the following unfit Soldiers?
- #13 - #16: Answer Key to PE



# Intro to the PDES/Senior Adjudicators Course

## Dispositions

### Computation of Service under 10 USC 1208

- 10 USC 1201 - 1206 refer to service as computed under 10 USC 1208.
- 10 USC 1208 has a subpara (a) for regulars and a subpara (b) for nonregulars.
  - “A member of the armed forces who is not a member of a regular component shall be credited for the purposes of this chapter with the number of years of service that he would count if he were computing his years of service under section 12733 of this title.”
- DFAS OGC has opined that the above means that if an RC member has 20 years of combined AD and IDT that totals 7200 points, the member is entitled to disability retirement when rated at less than 30%.
- DFAS also confirmed in a subsequent review that a Regular component Soldier who was former RC counts his membership and IDT points in the computation of service.
- All of the above means there is a difference between how service is computed for a Soldier retiring for length of service and a Soldier retiring for disability based on length of service.
  - For a regular length of service retirement, the member must reach 20 years of active service (AD) before equivalent RC service (membership and IDT) is added. This ‘adding’ of equivalent service is called 10 USC 1405 service.
  - For disability retirement, equivalent service is included in determining whether the Soldier has the requisite 20 years of 1208 service.
  - Bottom line: 1208 service equates to 1405 service.



# Intro to the PDES/Senior Adjudicators Course

## Dispositions



### Relationship of the DVA Rating Schedule to PDES Dispositions

- Under military disability law (10 USC chapter 61), a 30 percent rating under the DVA Schedule is the demarcation line between disability retirement and disability separation for members determined unfit with less than 20 years of service as computed under 10 USC 1208.
- 10 USC 1201(b)(3)(B): "...the disability is at least 30 percent under the standard schedule for rating disabilities in use by the Department of Veterans Affairs at the time of the determination, and either...."



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- Fit
- Permanent Disability Retirement (PDR)
  - Permanent and stable (or won't drop below 80%).
  - Minimum 30% under the DVA Schedule for Rating Disabilities or Soldier has 20 years of service as computed under 10 USC 1208.
  - Note: There is no PDR List.
- Temporary Disability Retired List (TDRL)
  - Not permanent and stable
  - May be permanent
  - Minimum 30% or 20 years of service as computed under 10 USC 1208.



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- Separate with Severance Pay (SWSP)
  - 0% to 20% and less than 20 years of service as computed under 10 USC 1208.
  - Stability irrelevant.
  - A SWSP must have 6 months of service (combined AD/IDT) to result in compensation.
    - Formula: 2 months basic pay for each year of service, not to exceed 12 yrs.
    - Per 10 USC 1212 service of six months is rounded up; and less than six months, is rounded down.
  - If RC with 20 qualifying years, Soldier has election under 10 USC 1209 between accepting disability severance pay or transfer to Inactive Status.
    - There is a difference among the services in execution. Army transfer to the Retired Reserve.  
Air Force transfer to the Inactive Status List, and member must request transfer to the Retired Reserve.
    - Election is irrevocable.
    - If Soldier fails to elect, soldier will be separated with severance pay.



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- Separate without entitlement to benefits (SWOB)
  - EPTS (and less than 8 years of active service (active duty) if on AD of more than 30 days.)
    - If orders contain the 25-day language for identification of "pre-existing conditions," there is no coverage under 10 USC 1207a if member is REFRAD within 30 days of mobilization.
    - 10 USC 1206a also precludes coverage under 10 USC 1207a in the above situation.
    - Those on AD with between 6 - 8 years of AD may be entitled to nondisability separation pay.
    - RC with at least 15 qualifying years may request transfer to the Retired Reserve under 10 USC 12731b.
  - LD-no for misconduct.
    - If soldier has 20 years of active duty, may request length of service retirement.
    - Note that for length of service retirement, member must obtain 20 years of AD and then the equivalent service is added. This addition is referred to as 10 USC 1405 service.
  - SWOB disposition not used for RC NDR cases.
    - RC NDR case disposition is "Referred for case disposition under RC regulations."



# Intro to the PDES

## Dispositions

### Nondisability Separation Pay

- Authorized by DoDI 1332.38, para E3.P7. 5.5.4 (page 53).
- Also see 10 USC 1174 and DoDI 1332.29.
- Must be on extended AD and have 6 years AFS if RA, or if RC, 6 years continuous AD immediately preceding disability separation.
- DoDI 1332.29 is the primary governing instruction.
- Generally only half-separation pay is approved. (Full may be authorized in exceptional cases.)
- PEBLO should contact ODCS, G-1, Compensation Directorate if local finance disapproves payment.



# Intro to the PDES/Senior Adjudicators Course

## Dispositions

### Grade at which Retired or Severance Pay Paid



- Disability retirement grade is per 10 USC 1372.
- Grade at which severance pay is paid is per 10 USC 1212.
- Above laws essentially provide for grade or pay at -
  - Current grade.
  - Highest grade satisfactorily held.
    - See PDA Policy Memo #17, 28 Feb 05
  - Promotion list grade.
    - Applied to “automatic promotions” (E-2 through E-4 and 02 through 03).
- Whether actual promotion is required is under legal review.
- Enlisted promotion policy has been changed to allow for last day promotion.
- Does not affect retired pay for those who entered after 7 Sep 80.



## Intro to the PDES/Senior Adjudicators Course



PE: What is the appropriate disability disposition for the following unfit soldiers?

- 0%, 19 years 1208 service, stable.
- 40%, stable, 4 months 1208 service, service-incurred.
- 100%, 3 years 1208 service, LOD-NO (due -to-own-misconduct).
- 10%, 22 years 1208 service, stable.
- 40%, on extended AD with 4 years 1208 service, EPTS, no permanent service aggravation.
- 20%, 10 years 1208 service, unstable.
- 30%, 12 years 1208 service of which 8 years is active service, on extended AD, LOD-no (EPTS with no service aggravation), stable.
- 60%, 20 years AFS service, LOD-No (due-to-own-misconduct).
- 10%, RC soldier with 20 qualifying years for nonregular retirement at age 60.
- Soldier with 7 years AFS service and two conditions:
  - 10% for knee pain
  - 20% for injury LOD-no.



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PE: What is the appropriate disability disposition for the following unfit soldiers?

- RC in TPU status, processed as nonduty-related case, unfit.
- RC AGR rated at 10%, has 19 years of active duty days, but 1 year of equivalent service (IDT membership and IDT points, for a total of 7200 points).
- 10%, unstable, 20 years of 1208 service.
- 15 good years, 20%.
- 20 good years, 20%.



## Introduction to the Army PDES

PE: What is the appropriate disability disposition for the following unfit Soldiers?



### Answer Key

- 0%, 19 years 1208 service, stable:

Answer: SWSP. 0% is a rating for LD-yes disability that is minor but still makes soldier unfit.

- 40%, stable, 4 months 1208 service.

Answer: PDR. Meets 30% level. No minimum six-month AD time for disability

retirement as there is for disability severance pay.

- 100%, 3 years 1208 service, LOD-NO (due-to-own-misconduct).

Answer: SWOB. 10 USC 1207 precludes covering disability due to misconduct.



## Introduction to the Army PDES

PE: What is the appropriate disability disposition for the following unfit Soldiers?



### Answer Key

- 10%, 22 years 1208 service, stable.

Answer: PDR because has at least 20 years and condition is stable.

- 40%, 4 years 1208 service, EPTS, no permanent service aggravation.

Answer: SWOB. Doesn't reach the 8 years required under 1207a.

- 20%, 10 years 1208 service, unstable.

Answer: SWSP. Can't go on TDRL for being unstable because rating is less than 30% and

years is less than the requisite 20.

- 30%, 12 years 1208 service with 8 years of active service, on extended active duty, EPTS, stable, no service aggravation.

Answer: PDR for EPTS because has 8 years AFS under 1207a.



## Intro to the PDES/Senior Adjudicators Course

PE: What is the appropriate disability disposition for the following unfit Soldiers?



### Answer Key

- 60%, 20 years AFS service, LOD-No (due to own misconduct)

Answer: SWOB. Soldier may apply for length-of-service-retirement.

- 10%, RC soldier with 20 qualifying years.

Answer: SWSP but may elect transfer to the Retired Reserve.

- Soldier with 7 years AFS and two conditions:

- 10% for knee pain
  - 20% for injury LOD-NO

Answer: Separate with severance pay for the 10% knee condition.

- RC in TPU status, processed as nonduty-related case, unfit.

Answer: Process for disposition under RC regulations.



# Intro to the Army PDES/Senior Adjudicators Course

## PE: What is the appropriate disability disposition for the following unfit soldiers?



### Answer Key

- RC AGR rated at 10%, has 19 years of active duty days, but 1 year of equivalent service (membership and IDT points, giving him a total of 7200 points of combined service).

Answer: PDR based on 20 years of service as computed under 10 USC 1208.

- 10%, unstable, 20 years of 1208 service.

Answer: PDR due to 20 years of 1208 service.

- 15 good years, 20%.

Answer: Separate with severance pay. No option for 10 USC 12731b (15-year letter).

- 20 good years, 20%.

DA Form will list separate with severance pay. HQUSAPDA will provide election option for choice of

disability severance pay or transfer to the Retired Reserve.